

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

**CRAIG STEVEN CALDWELL,**

Petitioner,

v.

No. 3:08-cv-1167-AC

**SHARON BLACKETTER,**

Respondent.

ORDER

Thomas J. Hester  
Assistant Federal Defender  
101 S.W. Main Street, Suite 1700  
Portland, Oregon 97204  
Attorney for Petitioner

John R. Kroger  
Attorney General  
Lynn David Larsen  
Assistant Attorney General  
1162 Court Street NE  
Salem, Oregon 97301  
Attorneys for Respondent

**SIMON, District Judge.**

On December February 28, 2012, Magistrate Judge John Acosta filed Findings and Recommendations in this case. Dkt. 45. Judge Acosta recommended that the Petition for Writ of

Habeas Corpus be denied and a judgment of dismissal entered. Magistrate Judge Acosta also recommended that a certificate of appealability be denied. No objections have been filed.

Under the Federal Magistrates Act, the court may “accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1). If a party files objections to a magistrate’s findings and recommendations, “the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.*; Fed. R. Civ. P. 72(b)(3).

If, however, no objections are filed, the Magistrates Act does not prescribe any standard of review. In such cases, “[t]here is no indication that Congress, in enacting [the Magistrates Act] intended to require a district judge to review a magistrate’s report[.]” *Thomas v. Arn*, 474 U.S. 140, 152 (1985); *see also United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9<sup>th</sup> Cir. 2003) (*en banc*) (court must review *de novo* magistrate’s findings and recommendations if objection is made, “but not otherwise”).

Although in the absence of objections no review is required, the Magistrates Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Rule 72(b) of the Federal Rules of Civil Procedure recommend that “[w]hen no timely objection is filed,” the court review the magistrate’s findings and recommendations for “clear error on the face of the record.”

No objections having been made, the court follows the recommendation of the Advisory Committee and reviews Magistrate Judge Acosta’s findings and recommendations for clear error on the face of the record. No such error is apparent. Accordingly, the court ADOPTS Magistrate Judge Acosta’s Findings and Recommendation. Dkt. 45. This case is dismissed with prejudice.

The court declines to issue a Certificate of Appealability on the ground that Petitioner has not made a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C.

§ 2253(c)(2).

IT IS SO ORDERED.

Dated this 26th day of March, 2012.

/s/ Michael H. Simon

Michael H. Simon  
United States District Judge